Law-Making Activity: Theoretical and Legal Approach

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Today, it is important to improve the norm-setting activity, which plays an important role in the process of large-scale socio-economic and judicial reforms in our country, in particular, to raise this activity to a qualitatively new level.

Accordingly, in the scientific literature and normative legal documents, scientists and experts have put forward theoretical approaches to the creation of norms governing the regulation of social relations in society, their change and abolition, and developed relevant norms in the field.

As for the analysis of some literature on the concept of "creation" in the normative work, the Uzbek dictionary states that "creation" is derived from the Arabic word, which literally means "creation", "discovery", "creation". Creativity - the creation of a work of art, science, art or material wealth; creative activity ”. So, creativity and creativity is a broad, multifaceted concept.

In this regard, most scientific sources and research can show the following scientific approaches to the concepts of "law-making", "rule-making", "law-making" and their differences.

In particular, SV Sinyukov spoke about the concepts of lawmaking and rulemaking, noting that these are exactly the same concepts, in the first case the creation of legal norms, and in the second case the creation of the law as a whole[[1]].

According to DN Kordik, the concept of "law-making" is broader, including the concept of "rule-making". The concept of norm-setting usually covers the process of developing, amending or repealing normative legal acts - decrees of the President of the Russian Federation, government decrees, acts of federal executive bodies and executive bodies of federal subjects[[2]].

Russian theorist S.V. Polenina defined the concept of "rule of law" as a process that involves the formation and adoption of legal acts by the competent authorities in the prescribed manner[[3]].

According to VL Kulapov, lawmaking is "the development, publication, repeal and improvement of normative and legal instructions by the competent authorities of the state" [4].

According to Yu.L. Korabelnikova, the concept of norm-setting includes the process of development, adoption, amendment or repeal of normative legal acts [5].

Accordingly, from the point of view of jurists TN Moskalkova and VV Chernikov, it is usually used to understand the concept of "legal creativity" as a general process of adoption, regardless of the appearance of legal documents. Legal creativity can be divided into the following types, in particular, rule-making (adoption of normative-legal documents), self-government law-making, contract law-making (concluding contracts), judicial law-making (acceptance of court documents), individual law-making (individual legal-making). acceptance of documents) and others [6].

According to Sh.A. Saidullaev, in order for the source of law to have a certain official form, of course, such a source must be recognized by the state and officially recognized, ie strengthened by the relevant law enforcement agencies [7].

One group of scholars notes that lawmaking is an integral part of lawmaking, which is a relatively broad process. According to them, the creation of law is a process aimed at the formation and

formalization of a legal norm, which will take a long time. This process: analysis of the social situation, understanding the need for its legal regulation; to form an overview of the future legal rule; such as developing and adopting a legal norm. The final stage of law-making is the creation of law [8].

According to HT Odilkariev, the process of norm-setting is a set of actions of norm-makers aimed at creating new normative-legal documents in the manner prescribed by the Constitution, making additions and amendments to existing normative-legal acts, as well as repealing obsolete normative-legal acts. - identification of relations that need to be regulated by a legal document, preparation, discussion and adoption of a draft regulatory document [9].

Legal scholars SV Sinyukov, TN Moskalkova and VV Chernikov did not agree with the above-mentioned concepts of law-making and norm-making, as well as the differences between these concepts "in terms of sources of law" and D.N. In part, taking into account Kordik's views on the concept of rule-making, in our opinion, it is appropriate to describe the concepts of "law-making", "rule-making" and "law-making" from the point of view of direct sources of law.

At this point, S. V. Boshno noted that the result of legal creativity provides the sources of law[10].

Law scholar S. According to S. Alekseev, the real result of lawmaking is the legal norms[11].

In our opinion, the activity aimed at creating, changing and repealing the rules of conduct, the implementation of which is mandatory, is "law-making", and only the activity of developing, amending and repealing normative legal acts should be understood as "norm-making".

At the same time, it is appropriate to understand the concept of "lawmaking" only in the activities of the state legislature to create, amend and repeal laws governing social relations.

One of the manifestations of law-making is the issuance of individual, formal, authoritative and binding orders by the head of a particular organization or institution.

Based on the above, in terms of the creation, modification and repeal of universally binding rules of conduct, "law-making" is a broader category that includes the concepts of "rule-making" and "law-making".

In the course of our research, a public survey was conducted among employees of regional justice bodies (90 respondents) on the concepts of lawmaking, lawmaking and rule-making.

When we asked the judiciary, "Do you think that you agree on a single understanding by combining these concepts, or are these categories with separate meanings?", 67% of them answered, "It is advisable to understand these concepts separately." Seventeen percent of employees said it was appropriate to have a single understanding of these concepts, while the remaining 16 percent said "legal creativity" and "normative creativity are one concept."

According to E. Vrublevsky, a foreign jurist, the concept of lawmaking can be seen as a process carried out through all procedures, from the stimulus of necessity, which begins with a legislative initiative, to the evaluation of a strict draft of normative documents [12].

MK Najimov described norm-setting as a process that includes the identification and assessment of the legal needs of society and the state, the formation and adoption of legal documents by the competent authorities in the prescribed manner, emphasizing the following aspects. Norm-making - a process that involves the identification and assessment of the legal needs of society and the state, the formation and adoption of legal acts of the competent authorities in the prescribed manner; identification of the body (subject) authorized to adopt this or that legal act; choosing the form of the act to be adopted; prepare, adopt or amend a legal act under the relevant procedure [13].

According to EN Yarmonova, norm-setting is a relatively broad concept, which includes the process of formation of all social norms in society, along with the rule of law of the state [14].

According to L.A. Morozova, "norm-making" is the development and approval of legal norms by the state [15].

AN Semyonovych described normative creativity as one of the systemic elements of building a state governed by the rule of law and civil society [16].

In the views of the above-mentioned scientists, E.N. Yarmonova and L.A. Morozova, we can see that the concept of norm creation is directly related to the activities of the state.

Although there are theoretical approaches to the concept of norm-setting in the scientific literature, it can be shown that our national legislation has not developed a clear legal definition of the concept of "norm-creating initiative", "norm-creating activity", "norm-creating subjects".

Due to the organizational and legal nature of the norm, it should be noted that this activity has the following characteristics:

first, that this activity covers the stages of preparation of draft normative legal acts, which are one of the direct sources of law, their legal examination and coordination, discussion, adoption (issuance) with interested bodies and organizations;

second, the adoption of a normative legal act by a person or body authorized to adopt it;

thirdly, the existence of special procedures for the implementation of legislative activity, which is one of the main areas of this activity, in the manner prescribed by law;

fourth, the participation of the local population in these activities.

Law scholar VV Trofimov pointed out that populism, democracy, science, legitimacy, and systematization are the principles of lawmaking [17].

According to S. Guseva, the rule of law is based on the principles of democracy, legitimacy, professionalism, regularity [18].

According to national legislation, norm-setting activities are carried out in accordance with the principles of human rights, freedoms and legitimate interests, legality, democracy, transparency, agreement, logical consistency, expediency, scientific substantiation, and these principles are as follows:

1. A person, his rights and freedoms and legitimate interests shall be observed in all spheres of the state and law, including the development of normative legal acts. In particular, in accordance with the Decree of the President of the Republic of Uzbekistan No. PF-5505 dated August 8, 2018, the formation of a structured legislative framework aimed at the full implementation of the principle "Human interests are paramount" is one of the expected results of the Concept.
2. On the basis of the principle of legality, this activity is carried out by the subjects of norm-setting in accordance with the Constitution and laws of the Republic of Uzbekistan.
3. The principle of democracy in the creation of the norm, in turn, ensures the participation of the people in this activity. by popular vote of citizens on issues.
4. We can see the principle of transparency of normative activity in the discussion of the draft law. In particular, according to Article 20 of the Law of the Republic of Uzbekistan "On regulatory legal acts" of December 24, 2012, the draft legislation will be submitted for public discussion. This discussion will be held with the participation of interested government agencies and scientists and experts. Also, according to Article 28 of the Law, normative legal acts must be

published in official publications, and the publication of normative legal acts is a mandatory condition for their application.

5. The principle of agreement in the creation of norms. In accordance with paragraph 88 of the Guidelines, approved by the order of the Minister of Justice of the Republic of Uzbekistan dated April 9, 2012 No 83-mh (registration number 2352, 09.04.2012), after consideration of the draft law by the legal service of the developing agency signature).

In accordance with the system of agreements based on this principle, projects related to the socio-economic development of Uzbekistan, the implementation of programs for the development of certain sectors and industries of the economy, the allocation of funds from the state budget of the Republic of Uzbekistan. on related issues - with the Ministry of Foreign Economic Relations, Investments and Trade, and on issues related to the development and operation of farms - with the Farmers' Council of Uzbekistan.

6. The principle of logical coherence is mainly reflected in the content of the official document, which is the product of norm-making activities. In particular, in accordance with paragraph 29 of the Guidelines approved by the order of the Minister of Justice of the Republic of Uzbekistan dated April 9, 2012 No 83-mh (registration number 2352, 09.04.2012), the structure of the project should ensure the logical development and coverage of the project. The normative-legal document is divided into the following structural units, decreasing in size: sections, subsections, chapters, paragraphs, paragraphs, subsections and paragraphs.
7. In our opinion, the essence of the principle of expediency is the compliance of draft regulations, which are the product of norm-setting activities, with the scope of regulation and the need to adopt the project.
8. A group of jurists has expressed the following views on the principle of scientific substantiation of normative creativity. In particular, when it comes to the scientific principle, at least two aspects are considered. First, legal creativity must be based on a thorough scientific strategy. Such a strategy will be shaped at the national level. It is usually carried out by strategic research institutes under the highest authorities of the state. Second, when working on the text of a specific normative legal act, scientific recommendations should be taken into account in the creation and expression of the rule of law (in terms of content and legal technique). The goal is to be as effective as possible in regulating social relations. In order to provide scientific support for their activities, law enforcement agencies include leading lawyers-scientists in the working groups in the preparation of draft legal documents; send it to the relevant scientific institutions for a conclusion on the project.

As for the stages of the norm-making process, the theoretician MK Najimov divided this process into 8 stages:

1. Initiative for the development of regulatory documents.
2. Project development.
3. Placement of projects that affect the implementation of business activities on the Single interactive state services portal.
4. Legal examination of the project by the legal service.
5. Coordination of the project with interested bodies and organizations.
6. Legal examination of the project in the judiciary.
7. Adoption of a normative legal document.

8. Norm-making is carried out at the stages of organizing the proper delivery of the normative legal act to the executors and the population and control over the implementation of the normative legal act ”[19].

In our opinion, taking into account the fact that the stages of norm-setting activity begin with the formation of initial proposals for the development of the draft normative-legal document, planning of project development activities, organization of project preparation, disagree with the lawyer MK Najimov on the stages of norm-setting process possible.

In our opinion, it is expedient to divide the stages of norm-making activity on the basis of the types of normative-legal documents and on the basis of the analysis of the legislation in the field into:

1. Stages of norm-making on draft laws:

making an appropriate decision on the development of the bill;

organization of drafting the law;

study of public opinion, law enforcement practices and best international practices in the preparation of the bill; project development;

send the bill for review;

examination of the draft law;

legal examination of the draft law by the legal service of the developer (receiver) and the judiciary;

coordination of the project with stakeholders;

submission of the draft law to the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan by the subjects of the right of legislative initiative;

participate in the development and discussion of draft laws prepared by government agencies and organizations;

to participate in the consideration of draft laws in the chambers of the Oliy Majlis.

2. The stages of drafting plans on draft laws, laws prepared by the Cabinet of Ministers on the instructions of the President of the Republic of Uzbekistan, Presidential decrees, decrees and draft resolutions and orders of the Cabinet of Ministers are as follows:

formation of initial proposals as a basis for project development;

norm-setting activity planning;

organization of project preparation;

project development; legal examination of the project by the legal service of the project developer;

public discussion of the project;

process of project coordination with stakeholders;

legal examination of the project in judicial authorities;

submit for project approval.

3. Stages of norm-making on development of departmental normative-legal documents:

organization of project preparation;

project development;

project coordination;

adoption of departmental regulations;

legal examination, state registration and entry into force of this type of document.

4. Stages of norm-making on the development of normative-legal decisions of local authorities:

organization of project preparation;

project development;

legal examination of the draft decision by the legal service of the local state authority;

coordination of the project with the relevant agencies;

legal examination of the project by the territorial bodies of justice;

submit the project to the local state authority.

Based on the research, in our opinion, it is expedient to give the following legal description of the concept of norm creation:

“Normality is the formation of initial proposals for the development of a draft normative legal document, planning of project development activities, organization of project preparation, project development, legal and other types of expertise and state registration of the project, project discussion, project stakeholders. and activities that include processes such as agreement with organizations, participation in project review, and submission for project review, acceptance, and approval. ”

The criteria for classifying normative creativity are: “subjects of normative creativity, ie a person or body authorized to adopt a specific act; procedures for the adoption of normative acts (legislative process, individual or collective decision); types of normative legal acts (laws, legal acts), etc.

ZM Islamov, on the other hand, pointed out such types of law-making as direct law-making of the people, law-making of state bodies, law-making of officials [20].

In our opinion, from the point of view of the process of development, amendment and repeal of laws and regulations, it is expedient to divide the norm-making activity into two main types, namely, law-making and rule-of-law creation.

It is also appropriate to define the concept of "norm-making techniques", which applies to all types of normative legal acts, as a set of rules, methods and tools used in the development, legal and technical drafting, adoption of draft normative legal acts.

There are no widely used concepts in the legislation of Uzbekistan in the field of norm-setting: "norm-creation", "norm-creation initiative", "legislative initiative", "norm-creation technique", "norm-creation subjects".

An analysis of the experience of advanced foreign countries shows that these concepts are defined in the legislation.

Accordingly, it is proposed to define the mentioned concepts in national legislation based on law enforcement practice.

Also, based on the legal nature of the normative activity, along with the general legal principles, it is proposed to establish in the legislation: "priority of universally recognized principles and norms of international law", "systematic and comprehensive legal regulation of social relations", "legal regulation of social relations" stability.

The statement of the above-mentioned principles, in turn, serves to improve the quality of norm-making activities and to ensure a consistent and uniform practice of the application of a single law.

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